IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

MFA.No. 564 of 2001

AGAINST OPMV.539/1998 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANTS/PETITIONERS:
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1. K.M.LAKSHMIKUTTY AMMA, W/O.LATE RAMANKUTTY NAIR, AGED 49 YEARS, SOUBHAGIA, PATHANKULAM POST, PANAMANNA VIA., OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. ANAND MENON, S/O.LATE RAMANKUTTY MENON, AGED 27 YEARS, SOUBHAGIA, PATHANKULAM POST, OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR

RESPONDENTS/RESPONDENTS:
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1. SMT.P.MEENAKSHI, MANAGING PARTNER, MAYA TRANSPORT, PATTURAIKKAL, THRISSUR.

2. T.RAVI, S/O.GOVINDANKUTTY NAIR, AGED ABOUT 46 YEARS, THEKKOOTTU HOUSE, CHEMBUTHARA POST, PATTIKKAD, THRISSUR.

3. THE UNITED INDIA INSURANCE COMPANY LIMITED, PRAKASH BUILDING, T.B.JUNCTION, THODUPUZHA-685 584.

(SINCE NO RELIEF IS CLAIMED AGAINST RESPONDENTS 4 TO 6 IN THE ABOVE ORIGINAL PETITION, THEY ARE NOT MADE PARTIES IN THIS APPEAL)

R3 BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 564 of 2001

Dated this the 2nd day of November, 2007.

JUDGMENT

Koshy, J:

A retired Indian Airforce Officer died at the age of 54 on 1.12.1997 in a motor accident. His wife and son claimed a compensation of Rs.20 lakhs. The Tribunal awarded a total compensation of Rs.2,44,544/-. The Tribunal also found that the accident occurred due to the rash and negligent driving of the 2nd respondent of the offending vehicle, owned by first respondent and insured by the 3rd respondent Insurance Company. The 3rd respondent Insurance company was directed to pay the Compensation. The quantum of compensation alone is disputed in this appeal.

2. The Tribunal fixed 11 as the multiplier. Even though it was argued that the deceased was healthy, considering the increase in life expectancy and reduction in interest rate higher multiplier should have been taken, we are of the opinion that apt multiplier was taken by the Tribunal taking guidance from 2nd schedule.

3. According to claimants, his monthly income was Rs.18,000/-. His pension papers were produced. Ext.A14 is the pension certificate

and Ext.A15 is the service certificate. It shows that he was getting an amount of Rs.6000/- as monthly pension. It has come out in evidence that he was conducting a video cassette library, job typing centre, zerox copying centre and he was also working as UTI agent. Ext.16 is the Agent's Commission statement. Exts.A17 and A18 are the Account Books relating to the above business. According to claimants, from the above business, an amount of Rs.12,000/- was being received by him. He was also conducting a telephone booth. The Tribunal was of the view that even though he was getting Rs.6000/- as pension, since his wife was getting family pension, the pension need not be looked into for calculating dependency compensation. The Tribunal also stated that since all documents were not produced to assess the correct income and wife also can continue business, only Rs.2500/- was taken as monthly income for the purpose of calculating compensation. From that 1/3rd was deducted for personal expenses. It is contended that, though the business activities can be conducted through other agents by which income from business will be completely reduced and she will have to pay wages to employees. He was getting military pension. When he dies, his wife will get only 60% of the pension amount he was receiving. There will be a reduction of Rs.2400/- from pension amount also. It is also pertinent to note that after death wife's son will not get any amount. It is also stated that pension amount will

increase consequent to the rise in D.A. and wage revision. But everything was denied. We are of the opinion that even if actual reduction in the family pension at Rs.2500/- is taken into account and if the business income as calculated by the Tribunal total monthly income be Rs.4900/- (Rs.2500 + Rs.2400/-). We take Rs.4500/- as monthly income for the purpose of calculation. From that 1/3rd has to be deducted. So we take Rs.3000/- as the monthly loss of dependency. Therefore, the dependency compensation is Rs.5,40,000/- (Rs.3000x12x15). The Tribunal assessed compensation for loss of dependency at Rs.2,20,044/-. So, the additional amount payable will be Rs. 3,19,956/- (rounded to Rs.3,20,00/-) on that count. We are of the opinion that compensation granted under other heads are just and reasonable. The additional amount of Rs. 3,20,000/- shall be deposited by the 3rd respondent Insurance Company with 7% interest from the date of application till its deposit. On deposit of the amount, appellants are entitled to withdraw the amount in equal proportion.

Appeal is partly allowed.

Sd/-

J.B.KOSHY, JUDGE.

Sd/-

Krs. **K.HEMA, JUDGE.**

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 564 of 2001

Dated this the 2nd day of November, 2007.

JUDGMENT